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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JOHN LEDGERWOOD,

8 Plaintiff,

9 v.

10 CAROLYN W. COLVIN,
11 Commissioner of Social Security,

12 Defendant.
13

No. 2:12-CV-3061-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

14 BEFORE THE COURT are cross-Motions for Summary Judgment. ECF
15 No. 16, 19. Attorney D. James Tree represents John Ledgerwood (Plaintiff);
16 Special Assistant United States Attorney Richard M. Rodriguez represents the
17 Commissioner of Social Security (Defendant). The parties have consented to
18 proceed before a magistrate judge. ECF No. 6. After reviewing the administrative
19 record and briefs filed by the parties, the court **GRANTS** Plaintiff's Motion for
20 Summary Judgment and **DENIES** Defendant's Motion for Summary Judgment.

21 **JURISDICTION**

22 On October 8, 2008, Plaintiff filed a Title II application for a period of
23 disability and disability insurance benefits, alleging disability beginning August
24 17, 1996. Tr. 17. Plaintiff's claim was denied initially and on reconsideration, and
25 he requested a hearing before an administrative law judge (ALJ). Tr. 13-55. A
26 hearing was held on April 7, 2011, at which vocational expert Gary Jesky and
27 Plaintiff, who was represented by counsel, testified. Tr. 754-90. ALJ Riley J.
28 Atkins presided. Tr. 751. The ALJ denied benefits on April 6, 2011. Tr. 17-26.

1 The Appeals Council denied review. Tr. 5-9. The instant matter is before this
2 court pursuant to 42 U.S.C. § 405(g).

3 **STATEMENT OF THE CASE**

4 The facts of the case are set forth in detail in the transcript of proceedings
5 and are briefly summarized here. At the time of the hearing, Plaintiff was 48 years
6 old, graduated from high school and he lived alone in Goldendale, Washington.
7 Tr. 82; 758.

8 In his Disability Report, Plaintiff listed the injuries that limit his ability to
9 work as: depression, anxiety, panic disorder, and knee pain post injury. Tr. 159.
10 He has a significant history of drug use, and testified that he used
11 methamphetamine and marijuana for 26 years, but he has been clean for the past
12 six years, and never relapsed. Tr. 759; 765.

13 Plaintiff said he experiences panic attacks “every day.” Tr. 765. He
14 described the attacks as:

15 [T]rying to find your soul – your soul is sticking out of your body and
16 you’re looking for it... Panic, that’s what it is. It’s just – just how it
17 sounds. You know, you feel like you’re losing your mind, your
18 heart’s beating quick, and you can’t sit still, you know? ... they vary
19 in degrees. Some are worse than others. You don’t know when you
are going to get one.

20 Tr. 765. He takes medication and attends counseling every two weeks. Tr. 766-
21 67. Plaintiff testified that he lifts weights approximately five days per week, to
22 relieve his anxiety. He said he also “tends to” his wife, whom he said suffers from
23 arthritis, fibromyalgia and an ulcer, and he takes long walks. Tr. 768. Plaintiff
24 also said he volunteers at the food bank, and sometimes he has to leave in the
25 middle of working due to his anxiety. Tr. 770. He also volunteers with an
26 ophthalmologist, measuring the strength of eyeglass lenses, for about an hour at a
27 time. Tr. 771. When the ALJ pointed out that the records indicate he worked at
28 the doctor’s office 15 to 20 hours per week, Plaintiff responded, “Sometimes.

1 Sometimes not. I haven't been there a whole [lot lately]..." Tr. 771-72.

2 Plaintiff's past work history includes working as a laborer, garbage man,
3 telemarketer, landscaper and caregiver. Tr. 781.

4 STANDARD OF REVIEW

5 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set
6 out the standard of review:

7 A district court's order upholding the Commissioner's denial of
8 benefits is reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174
9 (9th Cir. 2000). The decision of the Commissioner may be reversed
10 only if it is not supported by substantial evidence or if it is based on
11 legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).
12 Substantial evidence is defined as being more than a mere scintilla,
13 but less than a preponderance. *Id.* at 1098. Put another way,
14 substantial evidence is such relevant evidence as a reasonable mind
15 might accept as adequate to support a conclusion. *Richardson v.*
16 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
17 more than one rational interpretation, the court may not substitute its
18 judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
19 *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599
20 (9th Cir. 1999).

21 The ALJ is responsible for determining credibility, resolving conflicts in
22 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
23 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
24 although deference is owed to a reasonable construction of the applicable statutes.
25 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

26 It is the role of the trier of fact, not this court, to resolve conflicts in
27 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
28 rational interpretation, the court may not substitute its judgment for that of the
Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
(9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will
still be set aside if the proper legal standards were not applied in weighing the

evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to support the administrative findings, or if conflicting evidence exists that will support a finding of either disability or non-disability, the Commissioner's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

SEQUENTIAL PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimant can make an adjustment to other work; and (2) specific jobs exist in the national economy which claimant can perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an adjustment to other work in the national economy, a finding of "disabled" is made. 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

ADMINISTRATIVE DECISION

At step one, ALJ Atkins found that Plaintiff had not engaged in substantial gainful activity since October 8, 2008. Tr. 19. At step two, he found Plaintiff had the severe impairments of history of hernia repair, right knee osteoarthritis, bipolar disorder, anxiety disorder (not otherwise specified), and methamphetamine dependence (in remission). Tr. 19. At step three, the ALJ determined that Plaintiff does not have an impairment or combination of impairments that meets or

1 medically equal one of the listed impairments in 20 C.F.R., Subpart P, Appendix 1
2 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and
3 416.926). Tr. 21. The ALJ also found that Plaintiff has the residual functional
4 capacity (“RFC”) to perform a full range of medium work, with the following
5 limitations: “perform only unskilled to low semi-skilled work; no public contact;
6 and the claimant works best alone, not as part of a team.” Tr. 21. At step four, the
7 ALJ found that Plaintiff could not perform past relevant work. Tr. 24. At step
8 five, the ALJ concluded that considering Plaintiff’s age, education, work
9 experience, and residual functional capacity, jobs exist in significant numbers in
10 the national economy that Plaintiff can perform, such as janitor and laundry
11 worker. Tr. 25. The ALJ concluded Plaintiff was not disabled as defined by the
12 Social Security Act. Tr. 26.

13 ISSUES

14 The question presented is whether substantial evidence exists to support the
15 ALJ's decision denying benefits and, if so, whether that decision is based on proper
16 legal standards. Plaintiff contends the ALJ erred by: (1) rejecting the opinions of
17 Plaintiff’s treating and examining medical providers; (2) determining Plaintiff had
18 little credibility; and (3) in his determination at Step Five. ECF No. 17 at 11.

19 DISCUSSION

20 A. Credibility

21 Plaintiff argues that the ALJ erred by rejecting Plaintiff’s subjective
22 complaints. ECF No. 17 at 16-18. Plaintiff alleges that the ALJ failed to provide
23 little more than vague assertions, failed to specify particular testimony that
24 supported his reasoning, and the ALJ’s characterization of Plaintiff’s daily
25 activities as contradicting his complaints is not supported by the record. ECF No.
26 17 at 17-18.

27 The ALJ is responsible for determining credibility. *Andrews*, 53 F.3d at
28 1039. Unless affirmative evidence exists indicating that the claimant is

1 malingering, the ALJ's reasons for rejecting the claimant's testimony must be
2 "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). The
3 ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*,
4 903 F.2d 1229, 1231 (9th Cir. 1990). "General findings are insufficient; rather, the
5 ALJ must identify what testimony is not credible and what evidence undermines
6 the claimant's complaints." *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998),
7 quoting *Lester*, 81 F.3d at 834. Credibility findings "must be sufficiently specific
8 to allow a reviewing court to conclude the ALJ rejected the claimant's testimony on
9 permissible grounds and did not arbitrarily discredit the claimant's testimony."
10 *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004). To determine whether the
11 claimant's testimony regarding the severity of the symptoms is credible, one of the
12 factors the ALJ may consider is the claimant's daily activities. *See, e.g., Fair v.*
13 *Bowen*, 885 F.2d 597, 602-04 (9th Cir. 1989); *Bunnell*, 947 F.2d at 346-47.

14 In this case, the ALJ found that Plaintiff's statements about the intensity,
15 persistence and limiting effects of his symptoms are not credible. Tr. 22. The ALJ
16 cited Plaintiff's activities, such as his regular exercise, obtaining his GED and
17 volunteering, and concluded: "For purposes of disability analysis, however, the
18 activities described above show that the claimant is not as limited as alleged in his
19 application." Tr. 22.

20 As Plaintiff points out, the ALJ failed to identify the testimony that he
21 deemed not credible. Specifically, the ALJ failed to note the limitations Plaintiff
22 alleged in his application, and also failed to explain how the alleged particular
23 limitations are contradicted by the named activities.

24 The Defendant contends that the ALJ compared Plaintiff's activities with
25 "Plaintiff's allegations of a disabling level of pain or other symptoms." ECF No.
26 19 at 10. This, too, is insufficiently vague. Notably, three of Plaintiff's four
27 complaints are related to mental, not physical impairments, and thus the "disabling
28 level of pain" allegation is largely inapplicable. See Tr. 159.

1 In a credibility determination, it is not sufficient for the ALJ to make a
2 general statement that the testimony is contradicted by the record. *Holohan v.*
3 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) ("general findings are an
4 insufficient basis to support an adverse credibility determination"). Rather, the
5 ALJ "must state which pain testimony is not credible and what evidence suggests
6 the claimants are not credible." *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
7 1993); *see also Holohan*, 246 F.3d at 1208 ("the ALJ must specifically identify the
8 testimony she or he finds not to be credible and must explain what evidence
9 undermines the testimony"). The ALJ did not fulfill this obligation in this case and
10 instead provided a cursory conclusion that Plaintiff's activities proved were
11 inconsistent with his alleged limitations. Tr. 22.

12 "Long-standing principles of administrative law require [this Court] to
13 review the ALJ's decision based on the reasoning and factual findings offered by
14 the ALJ — not *post hoc* rationalizations that attempt to intuit what the adjudicator
15 may have been thinking." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219,
16 1225-26 (9th Cir. 2009). The ALJ did not provide any legally adequate reason to
17 reject plaintiff's credibility. Remand is warranted on this issue.

18 **B. Medical Opinions**

19 **1. Marie Ho, M.D.**

20 Plaintiff contends that the ALJ erred by finding the weight restrictions
21 opined by Marie Ho, M.D., were undermined by Plaintiff's testimony that he lifts
22 weights in the gym. ECF No. 17 at 14.

23 Marie Ho, M.D., examined Plaintiff on January 31, 2009. Tr. 294-98. Dr.
24 Ho noted Plaintiff's knee impairments, and concluded he could stand and walk up
25 to six hours in an eight hour day, sit up to six hours in an eight hour day, and lifting
26 or carrying is limited to 20 pounds occasionally and 10 pounds frequently. Tr.
27 297-98. Dr. Ho also opined that Plaintiff's postural limitations include kneeling,
28 crouching, and stooping occasionally. Tr. 298. Finally, Dr. Ho concluded that

1 Plaintiff's history of anxiety, panic attacks, depression, and attention deficit
2 hyperactivity disorder may limit his ability to function in the workplace. Tr. 298.

3 An ALJ may reject the opinion of an examining physician, if contradicted by
4 a non-examining physician, with "specific and legitimate reasons that are
5 supported by substantial evidence in the record." *Moore v. Comm'r of the Soc. Sec.*
6 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002), citing *Lester*, 81 F.3d at 830-31.
7 However, "the contrary opinion of a non-examining medical expert does not alone
8 constitute a specific, legitimate reason for rejecting a treating or examining
9 physician's opinion." *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001),
10 citing *Magallanes v. Bowen*, 881 F.2d 747, 752 (9th Cir. Cal. 1989); *see also*
11 *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990) ("The nonexamining
12 physicians' conclusion, with nothing more, does not constitute substantial
13 evidence, particularly in view of the conflicting observations, opinions, and
14 conclusions of an examining physician.").

15 The ALJ gave "significant weight" to Dr. Ho's evaluation, because it was
16 "generally consistent with the other evidence." Tr. 22. The ALJ rejected the
17 portion of Dr. Ho's report about the weight Plaintiff can lift because "additional
18 evidence reviewed at the hearing level shows that the claimant spends several days
19 a week at the gym and can lift significantly heavier amounts." Tr. 22.

20 At the hearing, Plaintiff testified that he could bench press 360 pounds. Tr.
21 777. He explained, "but I don't work out with it or anything. I'll workout with
22 like 270. That's one exercise, but you know, there's all kinds – some exercises I
23 use 20-pound dumbbell that are hard exercises to do." Tr. 777.

24 The ALJ's conclusion that because Plaintiff can bench press¹ weights, he
25

26 ¹Elsewhere in the opinion, the ALJ revealed his assumption about the
27 relationship between Plaintiff's bench pressing weights and Plaintiff's ability to
28 carry weight in the course of a workday. The ALJ rejected a February 2009

1 can therefore regularly carry heavy weights in the course of a workday is not
2 supported by logic or the record. As such, the evidence of Plaintiff's gym
3 workouts and the scant record related to lifting at his volunteer position do not
4 arise to "specific and legitimate reasons that are supported by substantial evidence
5 in the record" for rejecting the weight restrictions assessed by Dr. Ho. *See Lester*,
6 81 F.3d at 830-31. The weight given to Dr. Ho's assessment must be reconsidered
7 on remand.

8 **2. Steven Woolpert, M.S., MHP**

9 Plaintiff contends that the ALJ erred by rejecting the opinion from Steven
10 Woolpert, M.S., MHP. ECF No. 17 at 15-16. On February 11, 2008, Mr.
11 Woolpert completed a Psychological/Psychiatric evaluation. Tr. 356-61. In that
12 evaluation, he listed Plaintiff's diagnoses as Bipolar II Disorder, and Panic
13 Disorder, without agoraphobia. Tr. 357. Mr. Woolpert found Plaintiff had marked
14 impairments in the ability to: (1) understand, remember and follow complex (more
15 than two step) instructions; and (2) the ability to learn new tasks. Tr. 357-58. Mr.
16 Woolpert also found Plaintiff had multiple moderate impairments in the ability to:
17 (1) understand, remember and follow simple (or two step) instructions; (2) exercise
18 judgment and make decisions; (3) relate appropriately to co-workers and
19

20 determination of Plaintiff's RFC that recommended a light exertion level, "because
21 the evidence shows the claimant was frequently lifting *hundreds of pounds at a*
22 *time* while working out or unloading trucks at the food bank." Tr. 24 (emphasis
23 added). The pertinent record the ALJ cited was a July 9, 2010, visit with Mona
24 Morgan, M.Ed., that indicated Plaintiff arrived for an appointment with noticeable
25 perspiration and declared he had "unloaded 6000 pounds at the food bank." Tr.
26 455. The record contains no details about moving this weight, such as the
27 poundage Plaintiff lifted at one time, the weight he could repeatedly carry, or
28 whether he was aided by a forklift or a crew of other volunteers.

1 supervisors; (4) interact appropriately in public contacts; (5) respond appropriately
2 to and tolerate the pressure and expectations of a normal work setting; and (6)
3 control physical or motor movements and maintain appropriate behavior. Tr. 358.

4 Mr. Woolpert opined that anxiety and mood disorder impair Plaintiff's
5 cognitive functioning. Tr. 358. He noted that "anxiety symptoms such as racing
6 thoughts, restlessness and emotional distress with mood shifts and periods of
7 depression with pulling back from others [impair] his social and coping abilities in
8 personal [and] work environments." Tr. 358. Mr. Woolpert related that Plaintiff
9 had made progress in stabilizing his mood through mental health services, and he
10 was developing skills to manage his anxiety symptoms. Tr. 359. Finally, Mr.
11 Woolpert recommended "continuation of GAX eligibility due to extent and
12 significance of mood and anxiety disorders that impair functioning." Tr. 359.

13 An ALJ is required to "consider observations by non-medical sources as to
14 how an impairment affects a claimant's ability to work." *Sprague*, 812 F.2d at
15 1232. An ALJ must give reasons germane to "other source" testimony before
16 discounting it. *Dodrill*, 12 F.3d at 918. In determining the weight to give an
17 opinion from an "unacceptable" source, the ALJ considers: the length of time the
18 source has known the claimant and the number of times and frequency that the
19 source has seen the claimant; the consistency of the source's opinion with other
20 evidence in the record; the relevance of the source's opinion; the quality of the
21 source's explanation of his opinion; and the source's training and expertise. SSR
22 06-03p.

23 The ALJ gave little weight to Mr. Woolpert's opinion because he is not an
24 acceptable medical source, his assessment is inconsistent with Plaintiff's daily
25 activities, and Mr. Woolpert was improperly influenced: "Additionally, Mr.
26 Woolpert hinted the main reason to continue state assistance was so the claimant
27 could receive the benefits of mental health treatment. This goal may have
28 influenced his appraisal of the claimant's functional abilities." Tr. 23.

1 The ALJ's first reason for discounting Mr. Woolpert's opinion is not valid
2 because an ALJ must consider the opinions from non-acceptable sources, and must
3 provide a germane reason for rejecting the opinions. SSR 06-03p. The ALJ's
4 second reason – Mr. Woolpert's opinion is internally inconsistent – is a legally
5 valid reason, but it is not supported by the record. The ALJ cited the "treating
6 records" as evidencing that Plaintiff has fewer limitations than Mr. Woolpert
7 assessed. Tr. 23. The ALJ relies upon the facts that Plaintiff was able to study for
8 the GED exam, volunteered, exercised, walked, and attended counseling
9 appointments.

10 In evaluating whether a claimant satisfies the disability criteria, the
11 Commissioner must evaluate the claimant's "ability to work on a sustained basis."
12 20 C.F.R. § 404.1512(a); *Lester*, 81 F.3d at 833. Social Security regulations define
13 residual functional capacity as the "maximum degree to which the individual
14 retains the capacity for *sustained* performance of the physical-mental requirements
15 of jobs." 20 C.F.R. 404, Subpt. P, App. 2 § 200.00(c) (emphasis added). "The
16 process involves an assessment of physical abilities and then of the nature and
17 extent of physical limitations with respect to the ability to engage in work activity
18 on a regular and continuing basis." *Id.* (citing 20 C.F.R. § 404.1545(b)). "A
19 regular and continuing basis means eight hours a day, five days a week, or an
20 equivalent work schedule." *Id.* (citing S.S.R. 96-8p). In this case, the ALJ failed
21 to provide analysis of how Plaintiff's cited activities reveal an ability to sustain
22 full-time work.

23 Additionally, the ALJ failed to consider whether Plaintiff's daily activities
24 "meet the threshold for transferable work skills[.]" *See Orn v. Astrue*, 495 F.3d
25 625, 639 (9th Cir. 2007). Absent from the ALJ's decision is an analysis as to how
26 Plaintiff's abilities used in performing flexible, sporadic volunteer work and in his
27 exercise routine are transferrable to a work setting. *See Gonzalez v. Sullivan*, 914
28 F.2d 1197, 1201 (9th Cir. 1990) (ALJ erred by failing to explain how ability to

1 perform daily activities translated into the ability to perform work); *Fair*, 885 F.2d
2 at 603 ("[M]any home activities are not easily transferable to what may be the
3 more grueling environment of the workplace, where it might be impossible to
4 periodically rest or take medication"); *see also Vertigan v. Halter*, 260 F.3d 1044,
5 1050 (9th Cir. 2001) ("This court has repeatedly asserted that the mere fact that a
6 plaintiff has carried on certain daily activities, such as grocery shopping, driving a
7 car, or limited walking for exercise, does not in any way detract from her
8 credibility as to her overall disability."). In the absence of such analysis, the ALJ's
9 reliance upon Plaintiff's activities as establishing he can sustain full time work is
10 error.

11 The final reason the ALJ gave for discounting Mr. Woolpert's opinion was
12 the ALJ's speculation that Mr. Woolpert was improperly influenced by his desire
13 to have Plaintiff receive benefits so he could continue with mental health
14 treatment. Tr. 23. A healthcare provider's desire that a patient continue treatment
15 because treatment is improving his condition should not be characterized as an
16 "improper" motive. Moreover, the ALJ points to no evidence of actual
17 impropriety on the part of Mr. Woolpert and the court can discern no "hint" that
18 Mr. Woolpert based his opinion upon something other than professional judgment.
19 *See Lester*, 81 F.3d at 832 (quoting *Ratto v. Sec'y, Dept. of Health and Human*
20 *Servs.*, 839 F. Supp. 1415, 1426 (9th Cir. 1993)) ("The Secretary may not assume
21 that doctors routinely lie in order to help their patients collect disability benefits.");
22 *see also, Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (citing *Saelee v.*
23 *Chater*, 94 F.3d 520, 523 (9th Cir. 1996)(1997)) (the source of report is a factor
24 that justifies rejection only if there is evidence of actual impropriety or no medical
25 basis for opinion).

26 In this case, the record contains no evidence that Mr. Woolpert embellished
27 his assessments of Plaintiff's limitations to assist with a benefits claim. *See*
28 *Reddick*, 157 F.3d at 725-26 (ALJ erred in assuming that the treating physician's

1 opinion was less credible because his job was to be supportive of the patient).
2 Thus, the ALJ's rejection of Mr. Woolpert's opinion on the basis that his opinion
3 was based upon something other than sound medical judgment was improper. As a
4 result, Mr. Woolpert's opinion must be reassessed upon remand.

5 **C. Step Five**

6 Plaintiff argues that the ALJ erred in his Step Five determination by failing
7 to include all of Plaintiff's assessed limitations. ECF No. 17 at 18-19. In light of
8 the necessity for remand, the court will not address this issue, and on remand, the
9 ALJ will reconsider the Step Five determination.

10 **D. Remand**

11 Remand is appropriate when, like here, a decision does not adequately
12 explain how a conclusion was reached, "[a]nd that is so even if [the ALJ] can offer
13 proper post hoc explanations for such unexplained conclusions," for "the
14 Commissioner's decision must stand or fall with the reasons set forth in the ALJ's
15 decision, as adopted by the Appeals Council." *Barbato v. Comm'r of Soc. Sec.*,
16 923 F. Supp. 1273, 1276 n.2 (C.D. Cal. 1996) (citations omitted). The court notes,
17 however, that it is not suggesting that the ALJ's ultimate conclusions were
18 necessarily incorrect — only that the decision was conclusory or failed to provide
19 proper reasons for rejecting, or even accepting, certain opinions. It is the province
20 of the ALJ, not the Court, to assess the medical evidence. The Court cannot affirm
21 the ALJ's conclusions on grounds that were not invoked by the ALJ. *Ceguerra v.*
22 *Secretary of HHS*, 933 F.2d 735, 738 (9th Cir. 1991).

23 **CONCLUSION**

24 Having reviewed the record and the ALJ's findings, the court concludes the
25 ALJ's decision is based on legal error, and requires remand. On remand, the ALJ
26 is directed to reevaluate Plaintiff's credibility, the opinions of Dr. Ho and Mr.
27 Woolpert, reconsider Plaintiff's maximum RFC, and conduct new step four and
28 step five assessments. The decision is therefore **REVERSED** and the case is

1 **REMANDED** for further proceedings consistent with this opinion. Accordingly,

2 **IT IS ORDERED:**

3 1. Plaintiff's Motion for Summary Judgment, **ECF No. 17**, is
4 **GRANTED.**

5 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is
6 **DENIED.**

7 3. An application for attorney fees may be filed by separate motion. The
8 District Court Executive is directed to file this Order and provide a copy to counsel
9 for Plaintiff and Defendant. Judgment shall be entered for Plaintiff, and the file
10 shall be CLOSED.

11 DATED March 24, 2014.



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A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE